



September 2, 2000

Ms. Merri Schneider-Vogel  
Bracewell & Patterson L.L.P.  
Attorneys at Law  
711 Louisiana Street, Suite 2900  
Houston, Texas 77002-2781

OR2000-3786

Dear Ms. Schneider-Vogel:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139685.

The Lamar Consolidated Independent School District (the "district"), which you represent, received a request for all memos, letters, and written communications between Child Advocacy of Fort Bend County ("CAFBC") and the district, as well as all policies dealing with CAFBC and Fort Bend County Children's Protective Services ("CPS"). The requestor also requested all policies dealing with requests for interviews or information by CPS, CAFBC, law enforcement, guardian ad litem and Court Appointed Special Advocates dealing with district employees or children in the district, as well as invoices of attorney fees concerning two specified individuals. You explain that the district will disclose most of the requested information. However, you claim that the submitted information is excepted from disclosure under sections 552.101 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201 of the Family Code provides in part as follows:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

You state that Exhibit B contains information of a report of alleged or suspected abuse or neglect and the identity of the person(s) making the report. You explain that the information in Exhibit B was prepared by a district employee in connection with a report to CPS. As such, you argue the information is confidential under section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (construing predecessor statute)*. You also argue that the submitted information falls under the informer's privilege contained in section 552.131 of the Government Code.

You have also submitted documents in Exhibit C which you explain were forwarded to a Court Appointed Special Advocate who was appointed as a guardian ad litem for the children who are the subject of the CPS investigation. The Order of Appointment of Guardian Ad Litem provides the guardian ad litem access to the educational records of the children. The order states: "It is further ordered that the guardian ad litem shall have access to the medical, dental, educational, psychiatric and mental health records of the child to the same extent as a parent or managing conservator . . . ." The order further provides that the guardian ad litem shall not disclose confidential information received from any agency or individual, except to the court and the other parties in this case. You assert that the adoptive father is not a party to the action and, therefore, cannot receive this information because it is protected under section 552.101 as information made confidential by law.

In the instant case, however, the submitted information consists of student education records which are subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. "Education records" are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A).

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 of the Government Code as a "student record," insofar as the "student

record” is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

Section 552.114(a) of the Government Code requires that the district withhold “information in a student record at an educational institution funded wholly or partly by state revenue.” Further, section 552.026 provides that “chapter [552] does not require the release of information contained in education records of an educational agency or institution, except in conformity with [FERPA].” This office generally applies the same analysis under section 552.114 and FERPA.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student’s education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student’s parent. *See* 20 U.S.C. § 1232g(b)(1). Information must be withheld from required public disclosure under FERPA only to the extent “reasonable and necessary to avoid personally identifying a particular student.” *See* Open Records Decision Nos. 332 (1982), 206 (1978). Unless the information personally identifies particular students, it is not protected from disclosure under FERPA.

FERPA additionally provides that “[n]o funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, *the right to inspect and review the education records of their children.*” 20 U.S.C. § 1232g(a)(1)(A) (emphasis added).

In this instance, we conclude FERPA operates to allow parental access to the student’s education records.<sup>1</sup> *See Belanger v. Nashua, New Hampshire, Sch. Dist.*, 856 F. Supp. 40 (D.N.H. 1994) (district records relating to student’s juvenile court proceedings were “education records” which parent was entitled to access irrespective of state confidentiality law). In Open Records Decision No. 431 (1985), this office determined that to the extent FERPA conflicts with state law, the federal law prevails and that the Public Information Act’s exceptions do not generally apply to a parent’s request for his child’s own educational records. Further, the court order does not provide nor have you advised us that the requestor’s parental rights have been terminated.

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<sup>1</sup>We additionally note that if the investigation has been referred to the Department of Protective and Regulatory Services (the “department”), a parent who is a requestor may be entitled to access to the department’s records.

With regard to the court order, we do not believe that release of the education records to the requestor violates the court's order. The order merely gives the guardian ad litem access to information that would otherwise not be available to the guardian ad litem. Although the order prohibits the guardian ad litem from disclosing confidential information, the order does not prohibit the district from releasing education records to the requestor as required by FERPA. Thus, you must provide access to Exhibits B and C, which are education records concerning the requestor's child, to the requestor. However, the Family Policy Compliance Office of the United States Department of Education informed this office that the identities of the individuals who made the reports must be withheld. Therefore, you must redact the identities of the reporters before providing the requestor access to the education records.<sup>2</sup>

On August 2, 2000, the district received a request from the requestor for the brief submitted to this office. You explain that you sent a copy of the initial request for a decision to the requestor as required by section 552.301(d). Gov't Code § 552.301(d) (requiring governmental body to notify requestor that it wishes to withhold the requested information and has asked attorney general for a decision). Thus, you have complied with the requirements of section 552.301(d) and you were not required to send the requestor the second brief which you sent to this office pursuant to section 552.301(e)(1). Gov't Code § 552.301(e)(1) (providing that governmental body must submit written comments, the request for information, and the requested documents within fifteen days of receipt of the request to the attorney general for a decision).

However, the requestor's August 2, 2000 letter amounts to a new request for information. Because the second brief is information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business," the second brief is subject to the Public Information Act. *See* Gov't Code § 552.002(a)(1). Further, the governmental body's letter to the attorney general stating why information is excepted from disclosure is ordinarily available to the public. *See* Open Records Decision No. 459 (1987). However, pursuant to section 552.301(d)(2), a governmental body may withhold information in its brief that discloses the requested information. *See also* ORD 459 (determining that portions of the request letter that contain information that is in dispute or information protected by privacy may be withheld). After reviewing the brief, we do not find that the disclosure of the brief would reveal the information in dispute.

Further, you assert that the brief is excepted under section 261.201 of the Family Code. Because the brief is not a document used or developed in an investigation of suspected child abuse, you may not withhold the brief under section 261.201 of the Family Code. You also

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<sup>2</sup>Because you must withhold the identity of the reporters under FERPA, we need not address section 552.131.

assert that the brief is excepted under the attorney-client privilege. The submitted brief is a communication between the district and this office. This office has previously concluded that third-party communications are not protected by the attorney-client privilege. *See* Open Records Decision No. 574 at 5 (1990). Therefore, the district may not withhold the submitted brief under section 552.107. Having found no exceptions that apply to the brief, you must release a copy of the brief to the requestor.

In conclusion, because the submitted information consists of education records, the requestor must be provided access to the records in accordance with FERPA. However, the district must redact the reporters' identities. You must also release a copy of the brief submitted to this office to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Bialek".

Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB\er

Ref: ID# 139685

Encl: Submitted documents

cc: Mr. Gary W. Gates, Jr.  
2205 Avenue I, #117  
Rosenberg, Texas 77471  
(w/o enclosures)